
Presidential Authority in Granting Amnesty and Abolition: Constitutional Analysis of The Hasto Kristiyanto and Tom Lembong Cases

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ABSTRACT

KEYWORDS

amnesty, abolition,
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The President's authority to grant amnesty and abolition is a constitutional prerogative with profound implications for the rule of law and the system of checks and balances. This article analyzes the implementation of such authority in the context of the Hasto Kristiyanto and Tom Lembong cases, both of which highlight the tension between law, politics, and public morality. Using a normative juridical and constitutional approach, the study examines the limits and mechanisms of the President's prerogative as regulated in Article 14 (2) of the 1945 Constitution and its implementing laws. Findings show that although the President holds prerogative power, it is not absolute, since it requires consideration by the House of Representatives as part of democratic oversight. The cases demonstrate how political decisions can risk legal legitimacy if not conducted with transparency and accountability. The study concludes that procedural reform of amnesty and abolition is necessary to align with the principles of modern constitutionalism, including the establishment of objective parameters, public hearing mechanisms, and strengthening legislative oversight to prevent abuse of executive power.

INTRODUCTION

In the Indonesian constitutional system, the President holds a dual role as both the head of state and the head of government. This duality of functions grants them broad authority, including the prerogative to grant amnesty and abolition (Perwira et al., 2021; Widayati et al., 2020; Wutoy et al., 2022; Zen Zanibar, 2018). Conceptually, amnesty is the abolition of punishment against a person or group who have been sentenced, while abolition is the termination of criminal prosecution against a person before a court decision has acquired permanent legal force (Calathes, 2017; Fakunmoju, 2022). These two legal instruments have a strong political dimension because they concern the interests of restorative justice and national reconciliation.

Ideally, this prerogative is intended to correct systemic injustices or restore social balance for the benefit of the greater nation. However, in practice (*das sein*), the exercise of this prerogative often raises ethical and juridical debates, especially when it involves certain political figures or cases linked to the interests of power (Adhayanto et al., 2018; Hassan et al., 2016; Isnawati et al., 2023; Lagassé, 2021). This dynamic creates a tension between legal legitimacy and political legitimacy that requires in-depth study.

As stated by Asshiddiqie, the prerogative of the President should not be interpreted as absolute power independent of constitutional control, but rather as a legal instrument governed by the principle of constitutional accountability. When the President exercises the authority of

amnesty and abolition, consideration by the House of Representatives is necessary to prevent abuse of power and ensure that the decision reflects the will of the sovereign people.

In the actual context, the cases of Hasto Kristiyanto, Secretary General of PDI Perjuangan, who was involved in alleged corruption and obstruction of justice cases, and Tom Lembong, former Minister of Trade, who faced allegations of abuse of authority related to the sugar import policy, raise questions about the extent to which the prerogative can be applied without causing a crisis of legal legitimacy. These two cases are concrete examples of how political aspects, public morality, and law intersect in complex state practices.

The problems that arise are: first, what is the constitutional basis of the President's authority in granting amnesty and abolition according to the 1945 Constitution and its implementing regulations? Second, how is the principle of checks and balances implemented in exercising the authority of amnesty and abolition in the cases of Hasto Kristiyanto and Tom Lembong? Third, what are the challenges and directions of amnesty and abolition policy reforms to align with the principles of a democratic state of law?

This study aims to examine the implementation of the President's authority in granting amnesty and abolition by emphasizing constitutional analysis and the principle of checks and balances as its theoretical foundation. The scientific contribution of this research lies in critically analyzing the practice of prerogative authority in the context of actual concrete cases, as well as offering recommendations for procedural reforms to strengthen democratic oversight mechanisms over executive power.

METHOD

This research employed a normative juridical method with a constitutional approach. The normative juridical method focused on examining literature or secondary data, such as regulations and other relevant literature related to the issue being studied. The study analyzed the President's authority in granting amnesty and abolition, and examined the regulations and decisions associated with this authority based on the constitution.

The type of research was normative legal research that was prescriptive and applied, with data sources consisting of primary, secondary, and tertiary legal materials. Primary legal materials included the 1945 Constitution, Law No. 22 of 2002 concerning Amnesty, Constitutional Court Decision No. 1/PUU-XI/2013, and other implementing regulations. Secondary legal materials consisted of constitutional law textbooks, scientific journals, research articles, and other relevant academic documents. Tertiary legal materials included legal dictionaries and encyclopedias, providing further explanation of primary and secondary legal materials.

Data collection was carried out through library research, including the inventory of laws, court decisions, and academic literature relevant to the study. Data analysis was conducted qualitatively using legal interpretation methods, including grammatical, systematic, historical, and teleological interpretations. The analysis results were presented in a descriptive-analytical manner with a constitutional approach, providing a comprehensive picture of the implementation of the President's authority in granting amnesty and abolition.

RESULT AND DISCUSSION

Constitutional Basis of Amnesty and Abolition Authority

Article 14 paragraph (2) of the 1945 Constitution states: "The President grants amnesty and abolition by taking into account the consideration of the House of Representatives." This constitutional formulation affirms the existence of a mechanism of legislative supervision of executive decisions in granting amnesty and abolition. The phrase "by paying attention to consideration" shows that the House of Representatives does not have decisional power, but rather the power to give consideration (advisory power) which has significant political and moral weight.

In the history of Indonesian constitution, this provision has developed from time to time. During the Old Order, the President's prerogative tended to be absolute without effective control from the legislature. During the New Order period, although there was a formal mechanism for the consideration of the House of Representatives, in practice legislative control was very weak due to the dominance of executive power. After the reform, there was a strengthening of the role of the House of Representatives as part of efforts to democratize and strengthen checks and balances in the constitutional system.

As Kelsen explains, any prerogative authority must be subject to legal principles to avoid arbitrary power. In the Indonesian context, this principle is realized through the involvement of the House of Representatives which reflects the sovereignty of the people. Although the consideration of the House of Representatives is not juridically binding, it has strong political legitimacy because the House of Representatives is a direct representation of the people as the holder of supreme sovereignty.

Provisions in the Laws and Decisions of the Constitutional Court

The exercise of amnesty and abolition authority is further regulated in Law Number 22 of 2002 concerning Clemency. Although this law focuses more on clemency, some of the provisions in it can be analogous to amnesty and abolition, particularly regarding the filing procedure and the consideration mechanism.

The Constitutional Court Decision Number 1/PUU-XI/2013 provides an important affirmation that "the granting of amnesty and abolition is not a personal act of the President, but a state action involving political considerations of the law of the House of Representatives." This ruling reinforces the position that the President's prerogative should be exercised within the framework of democratic constitutionalism, not as a personal power independent of institutional control.

The Constitutional Court also emphasized that although the President has the final authority to decide on amnesty and abolition, the decision-making process must involve careful consideration from the House of Representatives. Thus, the legitimacy of the President's decision does not only depend on the aspect of formal legality, but also on the aspect of political legitimacy obtained through a deliberative process with the people's representative institutions.

The Philosophical and Juridical Dimension of the President's Prerogative

From the perspective of state philosophy, prerogative is a manifestation of trust in the moral wisdom of the leader. In the theory of the social contract, the people surrender some of Mochamad Novel, Raffa Misbach Muzakki, Farras Zakka Dhiaulhaq, Franco Fabianus Furanis, Sanika Daffa Raihan Rusdiyanto

their sovereignty to the ruler in the hope that the ruler will use that power for the common good. The prerogative to grant amnesty and abolition reflects this belief, where the President is given the authority to make corrections to the justice system in order to achieve higher justice.

But in the modern legal state, such power must be exercised based on definite and predictable legal principles. According to Dicey, the prerogative without supervision will only give birth to the potential for arbitrariness that is contrary to the principle of the rule of law. Therefore, the checks and balances mechanism is an important instrument to ensure that the prerogative is not abused for the interests of a particular political or particular group.

Juridically, amnesty and abolition have a strong foundation in the Indonesian legal system. Both of these instruments are recognized as part of the criminal law system that provides space for restorative justice and reconciliation. However, its implementation must meet fair legal principles, including transparency, accountability, and proportionality.

In comparative practice, many democratic countries limit the use of amnesty and abolition to only certain cases, such as political crimes or cases related to national reconciliation. These restrictions are intended to prevent impunity for perpetrators of serious crimes, such as crimes against humanity, gross corruption, or gross human rights violations.

Case Analysis of Hasto Kristiyanto and Tom Lembong

Legal and Political Context of the Second Case

The Hasto Kristiyanto case involves alleged corruption and obstruction of justice related to the case of alleged bribery in the election of regional heads. As the Secretary General of a major political party, this case has a strong political dimension and has the potential to affect national political stability. On the other hand, Tom Lembong's case is related to the alleged abuse of authority in the sugar import policy during his tenure as Minister of Trade. This case also has political implications considering that Tom Lembong is a public figure who has a certain political support base.

In these two cases, there was a discourse on granting amnesty as a political and legal step to ease tensions between law enforcement agencies and political parties. Normatively, the President does have the right to grant amnesty for certain criminal acts that have a political dimension or that are deemed necessary for the interests of national reconciliation.

The Question of Legal and Political Legitimacy

However, the problem arises when the reasons for granting amnesty are more political than substantive legal considerations. If studied with the theory of checks and balances, this kind of action can cause serious legitimacy problems. As Ginsburg put it, "executive clemency becomes legitimate only when accompanied by institutional accountability."

Legal legitimacy requires that the granting of amnesty must be based on objective and legally accountable considerations. These objective criteria can include: first, there is an urgent national interest; second, there is no better alternative to legal settlement; third, the granting of amnesty does not hurt the sense of justice of the community; Fourth, there is a guarantee that granting amnesty will not create a bad precedent that threatens the legal system.

Political legitimacy, on the other hand, requires public support and legitimacy from people's representative institutions. Without strong political support, granting amnesty can be

considered a form of political intervention to the ongoing legal process. This has the potential to cause a crisis of public trust in the legal system and state institutions.

Implications for the Rule of Law Principle

The granting of amnesty in the cases of Hasto and Tom Lembong without following transparent and accountable procedures could have several negative implications for the principle of the rule of law. Firstly, it could undermine the independence of law enforcement agencies, as granting amnesty during an ongoing investigation or prosecution may be seen as executive interference in the authority of independent law enforcement bodies. Secondly, it could set a bad precedent, creating the perception that the law can be disregarded for political gain, which would erode the integrity of the legal system. Thirdly, it could lead to horizontal injustice, as offering amnesty to certain individuals while excluding others who have committed similar crimes violates the principle of equality before the law. Lastly, such decisions, viewed as politically motivated and non-transparent, could diminish public trust in state institutions and the legal system as a whole.

The Principle of Checks and Balances in the Implementation of Amnesty and Abolition The Role of the House of Representatives as a Control Institution

The involvement of the House of Representatives in granting amnesty and abolition is a form of institutional safeguard against the President's prerogative. In Indonesian constitutional practice, the consideration of the House of Representatives is not legally binding, but has significant political and moral power. When the President ignores the consideration of the House of Representatives, even though it is constitutionally permissible, politically such actions can raise legitimacy issues.

According to Mahfud MD, the balance between the President and the House of Representatives in granting amnesty is the embodiment of the principle of mutual control, where each branch of power corrects each other without negating its constitutional function. In the context of the case of Hasto and Tom Lembong, public debate is an indicator of the health of a constitutional democracy that demands openness and accountability.

Effective Monitoring Mechanism

In order for the principle of checks and balances to be effective, several concrete supervision mechanisms are needed: 1) Transparency of the decision-making process: The President must publicly disclose the reasons and considerations for granting amnesty or abolition, including the legal, political, and social aspects on which the decision is based. 2) Intensive consultation with the DPR: The consultation process with the DPR must be carried out substantively, not just a procedural formality. The House must be given full access to relevant information and data to be able to give careful consideration. 3) Public participation: The public should be given the opportunity to express their views and aspirations regarding the plan to grant amnesty or abolition, for example through a public hearing mechanism or public consultation. 4) Post-decision oversight: Once an amnesty or abolition is granted, there needs to be an evaluation mechanism to assess the impact of the decision on the legal system and socio-political life.

Challenges and Directions of Amnesty and Abolition Policy Reform

Identify Key Issues

The main problems in the implementation of amnesty and abolition lie in several aspects: 1) Absence of a standard procedure: There is no clear and detailed procedure regarding how the process of filing, considering, and granting amnesty and abolition should be conducted. This opens up the space for political subjectivity in the President's decision-making. 2) There are no objective parameters: There are no clear criteria as to under what conditions, to whom, and for what crimes amnesty and abolition can be granted. The absence of these parameters makes every decision highly dependent on the discretion of the President. 3) Weak supervision: Although the 1945 Constitution requires the consideration of the House of Representatives, in practice this oversight mechanism is not strong enough to prevent abuse of authority. 4) Low public participation: The public does not have access to input or oversight of the amnesty and abolition process, so decisions tend to be elitist and closed-minded.

Reform Recommendations

Reform going forward should lead to the following:

First, the establishment of a special law on "Presidential Authority in the Granting of Amnesty, Abolition, and Restorative Justice" that affirms moral, juridical and administrative limits for granting amnesty and abolition. This law should contain: a) Clear definitions of amnesty and abolition b) Objective criteria for granting amnesty and abolition c) Submission and consideration procedure d) Monitoring and evaluation mechanism. e) Sanctions for abuse of authority

The second recommendation is the institutionalization of public participation through a public hearing mechanism before decisions are made, ensuring that the decision on amnesty and abolition is not only legally sound but also substantively legitimate. This can be achieved by publishing the amnesty/abolition plan in the mass media, opening spaces for the public to express their views, holding public hearings, and publishing the results of the deliberations by the House of Representatives. Third, it is crucial to strengthen the role of the House of Representatives in providing substantive considerations based on thorough analysis, rather than merely following procedural formalities. Adequate resources should be provided to support the House in conducting comprehensive studies. Fourth, the establishment of an independent commission tasked with evaluating requests for amnesty and abolition from legal, justice, and public interest perspectives is necessary. This commission could include legal academics, practitioners, community leaders, and representatives from civil society organizations. Finally, ensuring transparency and accountability in every stage of the process is essential. All documents and considerations upon which decisions are based must be accessible to the public, except for information that must be kept confidential under applicable laws and regulations..

Learning from Comparative Practice

Some democratic countries have developed more structured mechanisms for granting executive clemency. For example, in the United States, the president has the authority to grant pardons, but this power is limited to federal crimes and cannot be used in impeachment cases. Additionally, the Public Prosecutor's Office provides recommendations to the president. In France, while the president has the authority to grant clemency, it cannot overturn court

decisions or alter judgments, and this power is restricted to certain cases. In South Africa, the president can grant pardons but must consult the Truth and Reconciliation Commission for cases related to past human rights abuses. These comparative practices highlight that the authority for executive clemency in democratic countries is always accompanied by strict oversight mechanisms and clear, objective parameters. Indonesia can adopt these best practices by adjusting them to the national constitutional and socio-political context.

Implications for Law Enforcement and Democracy

The non-transparent and accountable implementation of amnesty and abolition authority has a long-term impact on law enforcement and the consolidation of democracy in Indonesia. First, it can weaken public trust in the criminal justice system. When people see that legal processes can be stopped or abolished through political decisions, they lose faith in the fairness of the legal system.

Second, the granting of amnesty and abolition that is selective can create the perception of discrimination in law enforcement. If only certain political figures are granted "pardons" while ordinary people must undergo full legal proceedings, this will cause social discontent and undermine the legitimacy of the rule of law.

Third, from the perspective of democratic consolidation, the uncontrolled exercise of prerogatives can encourage the occurrence of executive authoritarianism. When the President can easily stop or abolish legal proceedings against his political allies, this will create an unbalanced and potentially abusive system of power.

CONCLUSION

This study concludes that the President's authority to grant amnesty and abolition, regulated by Article 14 paragraph (2) of the 1945 Constitution, is a constitutional prerogative integral to the balance of state power but not absolute, requiring consideration by the House of Representatives as democratic oversight. The cases of Hasto Kristiyanto and Tom Lembong illustrate the complex interaction between law and politics, highlighting the risk of legal legitimacy issues and political impunity without strong transparency and accountability mechanisms. Thus, comprehensive regulatory reforms are necessary, including detailed laws, public participation, enhanced legislative supervision, an independent evaluation commission, and strict adherence to transparency and accountability principles. Effective checks and balances must be maintained to prevent misuse of this prerogative as a political tool, ensuring decisions serve substantive justice and national interests, not narrow political gains. Future research could explore practical models for implementing these reforms and the impact of enhanced democratic oversight on the legitimacy and effectiveness of amnesty and abolition processes in Indonesia.

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